



# The EU Mutual Learning Programme in Gender Equality

The impact of various  
tax systems on  
gender equality  
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Comments Paper - Greece



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# Greek Tax Law and Gender Equality

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## 1. Gender-based Aspects of Greek Tax Law

In the last decades, public awareness of gender equality considerably increased in Greece. For the first time, the 1975 Constitution guaranteed explicitly – apart from the general equality principle – the specific gender equality principle.<sup>1</sup> In the early 1980s, following the ascendancy into power of the socialist government, a set of comprehensive reforms implemented the gender equality principle in family law<sup>2</sup>. Consistent with this, in 1984 an amendment in the income tax legislation established a system of individual taxation<sup>3</sup> *in lieu* of the preexisting family-based model.<sup>4</sup> In principle, individual taxation has remained in place since then; however, some vestiges of a family taxation system persist and are being criticised as being inconsistent both with the gender equality principle and with European and international equality standards. In this respect, a distinction is necessary between the previous Income Tax Code (Act 2238/1994, as in force until the 2013 tax year) (1.1) and the new Income Tax Code (Act 4172/2013, as in force since 1 January 2014) (1.2).

### 1.1. Gender-based Aspects of Act 2238/1994

Until 2013, in principle income tax legislation (Act 2238/1994) established an individual taxation system. However, it also included exceptions, either distinguishing between “joint” tax assessment and individual tax liability<sup>5</sup> or providing that income stemming from business activity “*financially depending*” on the other spouse is added to the income of the latter and is taxed in his name (Art. 5 par. 2 Act 2238/1994). In addition, the *income of minor children* was added on the income of the parent with the highest total income – thus reflecting an indirect discrimination given the fact that the father traditionally had the highest income in an average Greek family. Moreover, if both parents had equal total income, the income of minor children was added on the income of the father and taxed in his name.<sup>6</sup> While at first

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<sup>1</sup> According to Art. 4 par. 2 of the Greek Constitution (as enacted in 1975 - GC), “Greek men and women have equal rights and equal obligations”, whereas according to Art. 116 par. 2 GC (as amended in 2001), “adoption of positive measures for promoting equality between men and women does not constitute discrimination on grounds of sex. The State shall take measures for the elimination of inequalities actually existing, in particular to the detriment of women”.

<sup>2</sup> See, in particular, Act 1329/1983 “Implementation of the constitutional principle of equality between men and women in the Civil Code and its Introductory Law, commercial legislation and the Civil Procedure Code and partial reform of the Civil Code provisions with respect to Family law”.

<sup>3</sup> See Art. 2 par. 1 Act 1473/1984 (replacing Art. 6 of Legislative Decree 3323/1955). See also Theodore Fortsakis & Katerina Savvaidou (Θεόδωρος Φορτσάκης & Κατερίνα Σαββαΐδου), *Φορολογικό δίκαιο (Tax Law)*, 4<sup>th</sup> ed. (Athens 2013), pp. 73-74.

<sup>4</sup> According to the original version of Legislative Decree 3323/1955 (Art. 6), the wife’s income was added to the husband’s income, who was taxed for the total sum of family income (whereas exceptionally the wife was taxed individually for salary or freelancer income not exceeding 30.000 drachmas).

<sup>5</sup> See Fortsakis & Savvaidou, *supra* note 3, p. 190, note 182.

<sup>6</sup> Further, if the liable parent did not hold the parental responsibility, the income was added on the income of the other parent and taxed in his or her name.

glance these provisions reflected a discrimination against men, they occasionally resulted in putting women in a discriminatory position; in particular, given the tax benefits provided to families with three children, mothers with three children including children of a previous marriage could not take advantage of tax benefits in contrast to fathers in the same situation. In procedural terms, spouses were required to file a *joint return*. Most importantly, the law explicitly held the husband *liable for filing a tax return also for his wife's income as well as for the income of minor children*, unless he does not have parental responsibility. Whereas tax liability was determined on an individual basis<sup>7</sup>, only the husband received a *tax refund*, even when this referred wholly or partly to income generated by his wife. Until 2010, tax authorities regularly invoked *tax secrecy* provisions in a discriminatory way that precluded women taxpayers from accessing the tax return that was submitted jointly with their husbands. In addition, although the legal situation was not crystal clear, tax administration – based on family law provisions on the joint residence of the married couple – regularly assumed that the wife necessarily had the *tax residence* of her husband (even if the latter's vital interests were based abroad). Last but not least, the *wording* of the tax return documents seemed to take for granted that the liable person is male. All in all, despite resting on a premise of individual taxation, tax legislation perpetuated several vestiges of a patriarchal family model.

Only exceptionally did judicial decisions question the validity of these provisions vis-à-vis gender equality standards. In particular, the joint tax return was deemed constitutional<sup>8</sup> as well as the joint taxation for income stemming from business activity “*financially depending*” on the other spouse.<sup>9</sup> Nonetheless, enforcement proceedings could be initiated only against the liable person and not his/her spouse.<sup>10</sup> Occasionally, the gender-based discrimination with respect to the taxation of three-child families was found unconstitutional.<sup>11</sup> Furthermore, the Greek Ombudsman – an independent authority charged with protecting fundamental rights and combatting maladministration<sup>12</sup> – had emphasized gender-based discrimination in tax legislation, devoting to these issues a special chapter in his fourth annual report.<sup>13</sup>

Consistent with this, in 2011 the Ombudsman submitted to the Minister of Finance a number of tax reform proposals with a view of eliminating gender-based discrimination on issues such as the wording of tax legislation and tax return documents, the husband's liability for filing a tax return also for his wife's income, common tax residency and taxation of three-child families.<sup>14</sup>

<sup>7</sup> In this respect, see also Art. 16 par. 8 Act 3842/2010 (revising Art. 74 par. 4 Act 2238/1994).

<sup>8</sup> See judgment no. 1215/2005 of the Thessaloniki Administrative Court of First Instance.

<sup>9</sup> For case-law references, see Fortsakis & Savvaidou, *supra* note 3, p. 74 notes 121-124 and Konstantinos Finokaliotis (Κωνσταντίνος Φινοκαλιώτης), *Φορολογικό δίκαιο (Tax law)*, 5<sup>th</sup> ed. (Athens-Thessaloniki 2014), p. 199 note 413.

<sup>10</sup> See judgments no. 19/2006 of the Dodecanese Court of Appeals, no. 5693/2006 of the Athens Administrative Court of First Instance and no. 185/2005 of the Rodopi Administrative Court of First Instance.

<sup>11</sup> See judgment no. 148/2010 of the Mytilene Administrative Court of First Instance.

<sup>12</sup> See Art. 103 par. 9 GC and Act 3094/2002 (Art. 3 par. 5).

<sup>13</sup> See the Ombudsman's Annual Review for 2002, pp. 187 et seq.

<sup>14</sup> See the Ombudsman's letter to the Minister of Finance, 31 August 2011, available at <https://www.synigoros.gr/?i=state-citizen-relations.el.isotita.61881> (in Greek, last visited on May 24, 2017).

## 1.2. Gender-based Aspects of Act 4172/2013

According to Article 67 par. 4 of the new Income Tax Code (Act 4172/2013, as currently in force - ITC), spouses, during the marriage, are required to file a *joint return* for their income on which the payable tax, duties and levies are *calculated separately* on each spouse's income (whereas the tax-free amount is also calculated on a gender-neutral basis). Persons that have entered a civil union can also file a joint return on an optional basis, in which case, for tax purposes, they are treated identically with spouses during marriage. Any losses in one spouse's (or civil union partner's) income are not set off against the other spouse's or civil union partner's income, whereas the new ITC has not included the "financial dependence" exception. In general, the husband (or civil union partner that is mentioned as liable) is *also required to file a return also for his wife's or civil union partner's income respectively*. Exceptionally, each spouse or civil union partner files a separate return for his/her income, if they are separated (or the civil union has been dissolved) at the time the return is filed<sup>15</sup> or one of the two spouses (or civil union partners) is under bankrupt status or is under court supervision. As far as the *income of minor children* is concerned, the person liable for filing the return is the parent or civil union partner who exercises custody (male or female) and in any event the husband that is deemed principally liable for filing a tax return.<sup>16</sup> Thus, in this respect, tax legislation continues to perpetuate a direct discrimination against men. Tax reduction (which is limited to income from employment and pensions) is calculated on a gender-neutral basis; however, the spouse (male or female) that "has no own income from any source" qualifies as "dependent person" related to the taxpayer.<sup>17</sup>

Accordingly, the procedural obligation to jointly file a tax return remains, although the electronic submission of tax returns renders any justification to this effect rather obsolete.<sup>18</sup> To be sure, the new Income Tax Code has eliminated some vestiges of a patriarchal family model, partly adopting a gender-neutral approach in terms of both terminology and substance. However, the husband's obligation to file a tax return also for the income of his wife remains, whereas the wording of the law allows

<sup>15</sup> The burden of proof for the separation or the dissolution of the civil union is borne by the taxpayer.

<sup>16</sup> According to Art. 11 par. 4 ITC, "income of minor children is added on the income and taxed in the name of the parent who holds the parental responsibility, and *in any case in the name of the husband who is deemed as principally liable of filing the tax return*" (emphasis added), whereas this provision does not apply for the following categories of income, for which the minor child has own liability to tax:

a) income earned by the child from an employment relationship pursuant to paragraph 2, article 12 ITC;

b) pensions received by the minor child because of his/her father's or mother's death. This rule also applies in case of divorce; see legal opinion 250/1994 of the Legal Council of the State.

<sup>17</sup> Art. 11 par. 1 a ITC. For practical purposes, this qualification is relevant with respect to the additional tax credit of 200 euros provided for the taxpayer and "his dependent persons" according to Art. 17 ITC (applicable to persons that are at least sixty seven percent (67%) disabled based on advice by the Disability Certification Centre (DCC) or the Supreme Military Health Care Service to certify disability; disabled officers and soldiers who have retired or/and officers who suffered trauma or disease as a result of hardship during war; victims of war or terrorism acts entitled to pension for such reason, including any family members of officers and soldiers who died in service and who are entitled to a survival pension from the State Budget; persons who are entitled to receive pension from the State treasury as disabled or victims of national resistance or civil war) as well as – until the 2016 tax year - with respect to the tax credit for medical expenses provided in Art. 18 ITC (in light of par. 3 stipulating that medical expenses incurred for dependent persons of the taxpayer are taken into account for the determination of the tax credit amount). Starting with the 2017 tax year, the tax credit for medical expenses has been abolished (Art. 69 par. 1 Act 4472/2017).

<sup>18</sup> At the same time, though, given the presumptive taxation system still in place in Greece (Art. 30-34 ITC), the joint obligation to file a tax return has some beneficial effects for taxpayers, as family income as a whole is taken into consideration for purposes of fulfilling the minimum presumptive taxation requirements.

a similar conclusion with respect to the income of minor children as well,<sup>19</sup> thus resulting in continuing complaints of the Ombudsman. In practical terms, bearing the liability to file a tax return also for the income of his wife, the husband is unable to get a tax clearance certificate electronically, having to resort for this purpose to the local tax office.

As far as tax residency is concerned, the ITC generally provides (Art. 4 par. 1) that an individual is resident in Greece is (s)he “has a permanent or primary home in Greece or has an habitual abode in Greece, or has a center of vital interests, namely their personal or economic or social ties in Greece”. An Ombudsman’s special report issued in 2014 emphasized that tax residency should be determined based on the individual’s center of vital interests, bearing in mind that a married couple does not necessarily share the same residence in light of modern socioeconomic realities.<sup>20</sup> In the same vein, in 2016, a seminal Council of State ruling (based on the pilot judgment procedure<sup>21</sup> that aimed at clarifying issues of major legal significance) emphasized that a separate residence of husband and wife is conceivable based on current social and moral understandings; as a result, in case a married individual is not obliged to submit an income tax return in Greece, as (s)he is not a tax resident of Greece because his or her center of vital interest is located abroad, no obligation exists to file a joint tax return with his or her spouse<sup>22</sup>. Up to this day (June 2016), the tax administration’s reaction to this judicial ruling remains unclear.

## 2. Gender Equality in Practice

Scholars have not paid particular attention to the potential relationship between the tax system and the comparative employment rates of men and women.<sup>23</sup> According to 2011 data, women’s employment rate is with 45,1% lower than the EU average of 58,5%. As the employment rate of men reaches 65,9%, between men and women there is a difference in the employment rate of 20,8 percentage points, amounting to one of the highest differences within the EU. However, from 2002 to 2011 this difference has somewhat decreased, as women’s employment has increased by 2,2 percentage points, while male employment has decreased by 6,3 percentage points. Part-time employment in Greece is significantly less common compared to the EU average, although the percentage of women working in part-time positions (10,0%) is substantially higher than the corresponding percentage of men (4,2%). With respect to the gender pay gap, in 2008 the average female employee earned 22,0% less than the average male employee, reflecting an increase of two percentage points compared to 2006 and a contrary tendency vis-à-vis the EU average. According to global 2016 data, Greece ranks 92<sup>nd</sup> out of 144 countries in terms of its performance in order to close the gender gap.<sup>24</sup>

<sup>19</sup> See *supra* note 16.

<sup>20</sup> This special report is available at <http://www.synigoros.gr/resources/docs/eidikh-ek8esh.pdf> (in Greek, last visited on May 26, 2017).

<sup>21</sup> See Art. 1 par. 1 Act 3900/2010.

<sup>22</sup> See judgment no. 1445/2016 of the Council of State (Greece’s Supreme Administrative Court).

<sup>23</sup> For the following data and related analysis, see The current situation of gender equality in Greece – Country profile, 2012, available at [http://ec.europa.eu/justice/gender-equality/files/epo\\_campaign/130911\\_country-profile\\_greece.pdf](http://ec.europa.eu/justice/gender-equality/files/epo_campaign/130911_country-profile_greece.pdf) (last visited on May 24, 2017).

<sup>24</sup> See The Global Gender Gap Report 2016, available at <http://reports.weforum.org/global-gender-gap-report-2016/economies/#economy=GRC> (last visited on June 30, 2017).

In light of the persistent financial crisis that plagues Greece since 2010 employment rates have generally deteriorated.<sup>25</sup> However, it would be risky to identify a causal connection between these developments and the tax system. Similarly, although the 2013 Income Tax Code adopts more clearly a gender-neutral approach, this has not had any visible repercussions in terms of employment rates or the actual fulfillment of the gender equality promise.

### 3. Conclusion

In principle, there is no current debate between individual taxation and family taxation models in Greece, as individual taxation is considered self-evident. However, assessed from a gender equality perspective, Greek tax law and its implementation by the tax administration continue to include discriminatory provisions most notably in terms of the joint tax return and the husband's main obligation to file it as well as his unqualified liability for income tax of minor children, whereas it remains to be seen whether recent case-law will ultimately clarify tax residency issues. Comparative law insights, also in light of the Swedish model, can play a significant role in revitalizing this discussion with a view of effectively promoting gender equality in tax policy and tax administration alike.

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<sup>25</sup> According to the most recent data (March 2017), unemployment rate for males and females amount to 19.1 and 26.7 percent respectively. See Greece Unemployment Rate, available at <https://tradingeconomics.com/greece/unemployment-rate> (last visited on June 30, 2017).